CURE
PROMOTING RAIL COMPETITION

May 23, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

RE: BNSF Acquisition Premium/STB Finance Docket No. 35506

Dear Ms. Brown:

Consumers United for Rail Equity respectfully urges the Surface Transportation
Board (Board) to use its full authority to prevent BNSF Railway Company (BNSF) from passing
on to captive customers the multi-billion dollar acquisition premium brought about by Berkshire
Hathaway's acquisition of BNSF in 2010.

In his recent 2010 Annual Report, Berkshire Chairman Warren Buffet proclaimed
that BNSF's 2010 returns were so impressive that BNSF was able to "replenish[]" over $22
billion in cash Berkshire paid for BNSF with the deal "increase[ing] Berkshire's 'normal'
earning power by nearly 40% pre-tax and by well over 30% after-tax." Berkshire Hathaway Inc.,
2010 Chairman's Letter to Shareholders (Feb. 26, 2011). BNSF now apparently wants more.
We understand that BNSF's Annual "R-1" report includes a massive $7,625,000,000 asset
premium write-up that BNSF seeks to include in the rate base. We understand this write up
would also be included in the Board's costing systems used to develop BNSF service costs,
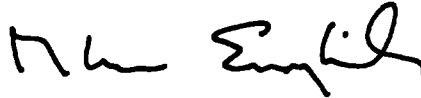establish maximum rates for captive shippers and determine "revenue adequacy."

We fear that what BNSF is really engaged in here is a transparent attempt to turn
"cost-based" ratemaking into "deal-based" ratemaking, and further bolster the coffers of
Berkshire and Berkshire's shareholders at the expense of the public. While merger premiums are
precluded by general rule from being included in the rate base in other regulated industries as a
means of consumer protection, BNSF is clearly attempting to exploit loopholes here and impose
unwarranted acquisition "costs" on consumers. BNSF is the largest railroad in the Nation by
volume, with its network covering the entire western two-thirds of the U.S. and, thus, many of
the industries and companies that we represent would be impacted by this premium, if permitted
to be included in the rate base. American businesses and consumers are already feeling the
effect of high prices on commodities in the current economic environment; allowing acquisition
premiums to be included in BNSF's rate base would make the situation even worse, to the

detriment of the nation's economy.

We would also note that the purchase of BN by Berkshire Hathaway, an entity that is not subject to the regulation of the Board, is unlike prior transactions in which the STB/ICC has sometimes allowed the inclusion of an "acquisition premium" to inflate the rate base. While we do not believe the Board/ICC acted properly in those cases either, it is worth noting that the justification cited in those cases does not apply to this case. In those previous cases, the transaction was a merger of two railroads and the resulting company was a railroad. In those cases, the Board/ICC found that the inclusion of the acquisition premium was justified by the un-quantified "efficiencies" resulting from the merger. In this case, of course, a financial entity paid a premium to purchase BN "lock, stock and barrel". There were no efficiencies that resulted from the merger of two railroad companies.

Eleven United States Senators recently wrote the Board urging it to take appropriate action to address this matter. A rail customer group (the Western Coal Traffic League) has recently filed a petition with the Board (Finance Docket No. 35506) to block BNSF from subjecting rail consumers to this $7,625,000,000 asset-premium write-up. We fully support this petition, and respectfully request that the Board promptly take all appropriate actions to deny BNSF attempts to burden consumers with any part of its acquisition premium.

Sincerely,

Hon. Glenn English
Chairman, Consumers United for Rail Equity
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, D.C. 20007
On Behalf of Consumers United for Rail Equity

cc: Parties of Record